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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/136,954 08/19/98 AZIZ

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022434 WM31/0717  
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EXAMINER

SEAL, J

ART UNIT

PAPER NUMBER

2131

*20*

DATE MAILED:

07/17/01

Please find below and/or attached an Office communication concerning this application or proceeding.

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/136,954	AZIZ ET AL.	
	Examiner James Seal	Art Unit 2131	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 16 April 2001 .

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-73 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 1-31,34-39,54-59 and 69-73 is/are allowed.

6) Claim(s) 32-33, 40-53, and 60-68 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

15) Notice of References Cited (PTO-892)

16) Notice of Draftsperson's Patent Drawing Review (PTO-948)

17) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.

18) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.

19) Notice of Informal Patent Application (PTO-152)

20) Other: \_\_\_\_\_.

**DETAILED ACTION**

1. This office action is in response to your correspondence of 31 January 16 April 2001.
2. The prior actions are incorporated herein by reference. In particular, the observations with respect to claim language, and the response to previously presented arguments.
3. Claims 1-79 are pending.

***Claim Rejections- 35 U.S.C. 251***

4. Claims 40-53 and 60-68 rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. As stated in *Ball Corp. V. United States*, 221 USPQ 289, 295 (Fed Cir 1984).

The following is repeated from last office action in order to respond to applicant's arguments.

In response to the art rejection in the parent case, (paper # 10, dated 21 December 1995) Applicant added the following language to claims 6 and 14 respectively:

5. Claim 6: (column 18, lines 61-64 of the '646 patent)

"generating a new address header and appending said new address header to said first data packet, thereby generating a modified first data packet"

Claim 14: (column 20, lines 21-22 of US5548646)

"generating a new address header and appending said new address header to said first data packet, thereby generating a modified first data packet"

6. Furthermore, claims 16 and 17 newly presented as part of the aforementioned response each contained this feature, and Applicant's arguments (page 5) rely on the new header for overcoming the art rejection.

7. The applicant argues that "this new header" need not be a "second header", but the replacement of the old header with a new header (16 April 2001) page 4 lines 21-25.

8. The examiner notes that there is no discloser of *replacement* header in the patent US 5,548,646. Referring to Figures 6, flow chart element 260 indicates the addition of an encapsulation header if encrypted. Figure 8 and Column 5 lines 48-54, indicate in the data packet shown element 400, element 410 is the data field, element 420 is the *original header* and element 430 new encapsulation header, with a new IP header 450. The diagram clearly shows at least two headers are included in mode 1. In mode 2 (Column 6, lines 21-32; and Figure 9) the new encapsulation header element 432 is shown as independent of original header element 420, and line 23, it states that

information is appended to the original data package (not replacement). Mode 2A is the same as mode 2 without tunneling bridge identifier (Column 5, line 33). In mode 3 (Column 7, lines 66-67 and column 8, lines 1-3; Figure 10) again uses the same data structure as Mode 2, ie., element 420 is the original heater, element 432 encapsulation heater. Mode 3A is the same as mode 3 but without the tunneling bridge identifier (Column 5, line 39-40). It is clear (according to Figures and description) the new header disclosed in the specification has referred to two headers and not one. Therefore there is no support in the specification of the original US patent for *new header* meaning a *replacement header*.

9. Further, the argument of the applicant provides a situation in which recapture would be avoided under present claim language, *but* it does not exclude recapture based on previous response.

***Claim Rejections - 35 USC § 102***

10. Rejection of claim 32-33, 40-41, 44-53 under 35 U.S. C. 102 (b) as being anticipated by White (WO 92/02095) is maintained. This is the priority document of White (US 5,303,303) which is already of record. The rejection is made on WO publication because of its earlier date.

11. Applicant's response is that White identifies network node by a node address rather than a "broadcast address".

12. White's invention is directed a data communication system using encrypted data packets for transmission over a non-secure communication network, such as a packet switching network, by providing data packet with a header containing identifying the entry and exit node at non-secure network (Column 1, lines 1-9). In particular White's invention is directed towards a WAN (Figure 2), but as White discloses applies to *any* network that allows packet switching which as one of ordinary skill in the art would recognize includes the Internet. A network node, whether on a WAN or the Internet is a device such as a server which interfaces a network with a plurality of subnetwork consisting of for example, WANs, or a plurality of uses, or even a single user. On the Internet an address consists of network prefix and a host number. The host number may include a subnet designator and host designator. Thus if the Network address (or node address) is 128.253.154.0 and corresponding host address might include the server or an individual client or a wildcard which specifies all individual clients on a particular subnet or collection of subnets, for example 128.253.154.255 which is the broadcast address for all individuals on the network mentioned above. Note both have the same network prefix (see Understanding IP Addressing: Everything You Ever Wanted To Know, Chuck Semeria, pages 3-4, 7-8 and 20). As one of ordinary skill in the art would recognize, the node address would become the network prefix when applied to the Internet and the host number would apply to server, subnetworks, individual users, or broadcast to either all user or to certain subnets. The host number contains all subnetworks, users and as a wildcard host address broadcast to all host

members or to all hosts on a particular subnetwork. As such broadcast address is covered by White's node address. Rejected maintained.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### ***Conclusion***

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Seal whose telephone number is 703 308 4562. The examiner can normally be reached on M-F, 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gail Hayes can be reached on 703 305 9711. The fax phone numbers for

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the organization where this application or proceeding is assigned are 703 305 0040 for regular communications and 703 305 0040 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 3900.

*JWS*

jws

July 13, 2001

*Gail Hayes*  
GAIL HAYES  
SUPERVISORY PATENT EXAMINER  
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